

UNITED STATES DISTRICT COURT
DISTRICT OF MARYLAND

CHAMBERS OF
J. FREDERICK MOTZ
UNITED STATES DISTRICT JUDGE

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July 10, 2015

MEMO TO COUNSEL RE: Franch Shaw v. Pfizer, Inc., et al.
Civil No. JFM-14-454

Dear Counsel:

I have reviewed the memoranda submitted in connection with defendants' motions for summary judgment. The motions (documents 72 and 73) are granted except for the motion filed by defendant Teva Pharmaceuticals USA, Inc.

Plaintiff cannot establish that any of the defendants, other than perhaps Teva, manufactured the drug administered to her. That is required by Maryland law as interpreted by the Fourth Circuit. *Foster v. American Home Products Corp.*, 29 F.3d 165 (4th Cir. 1994). Whatever merit there may be in plaintiff's criticisms over the *Foster* decision, the Fourth Circuit precedent is binding upon this court.

The provenance of the document relied upon by plaintiff to establish that Teva was the manufacturer of the drug administered to plaintiff is not clear. A hearing on that issue will be held on August 21, 2015 at 11:00 am. In the interim, plaintiff is requested to submit a letter addressing the questions raised in Teva's reply memorandum on or before July 31, 2015.

Alternatively, if the dynamics of the litigation warrant, you may wish to confer and decide either for plaintiffs to seek an interlocutory appeal so that the Fourth Circuit can consider the continued viability of the *Foster* decision or, alternatively, enter into an agreement that would make my ruling in favor of all of the defendants other than Teva final and ripe for review without prejudice to plaintiff's rights against Teva.

Despite the informal nature of this letter, it should be flagged as an opinion and docketed as an order.

Very truly yours,

/s/

J. Frederick Motz
United States District Judge